

REMARKS

Applicant, by the amendments presented above, has made a concerted effort to present claims which more clearly define over the prior art of record, and thus to place this case in condition for allowance.

5 Independent claims 1 and 19 have been amended to positively claim the properties which are inherent in a conduit with a wall thickness of less than 50 microns. Specifically, claims 1 and 19 have been amended to specify that the wall defining the breathing gases pathway comprises a very thin membrane having a thickness less than 50 microns such that the membrane is insufficiently sturdy to be self supporting; the conduit is insufficiently sturdy such that the
10 conduit would experience substantial internal volume changes as a result of the wall deforming due to fluctuating pressure within the conduit from patient breathing; and the elongate reinforcing member reinforces the conduit against the substantial volume changes that would occur in the conduit, but for the elongate reinforcing member.

This amended claim language has support in the application as originally filed as follows:

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- The limitation “very thin walled conduit” is defined in paragraph [0007] of the published application as a conduit where under the intended prevailing conditions, the conduit would be subject to excessive axial compression. This paragraph is one example of how the claim language is properly limited to include only conduits which would encounter substantial volume changes but for the fact that the breathing conduit also includes a reinforcing membrane.
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- Basis for the membrane being insufficiently sturdy to be self supporting is found in paragraph [00046] of the published application.

- Basis for the conduit be insufficiently sturdy such that it would experience substantial or internal volume changes from patient breathing is found in paragraph [0007] of the published application.

Claims 1, 2, 5, 7, 8, 14-16 and 19 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over United States Patent No. 3,163,707 to Darling in view of Gray. Claim 6 was rejected under 35 U.S.C. §103 as allegedly being unpatentable over Darling in view of Gray and further in view of United States Patent No. 4,874,925 to Dickenson. Claims 17, 18 and 20 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Darling in view of Gray and further in view of United States Patent No. 2,943,644 to Moseley. Reconsideration and withdrawal of these rejections is requested.

During the last interview with the Examiner, the Examiner indicated that he saw some merit in the argument that the invention of Darling for aircraft might make it more difficult to combine with Gray. It appears that the Examiner has overcome this argument by contending that both Darling and Gray broadly relate to conveying breathing gases to a person. The Examiner further argues that Darling recognizes that thinner walled conduits are more flexible and cheaper and therefore, can be properly combined with Gray to arrive at a wall thickness of less than 50 microns as claimed.

Applicant agrees that Darling refers to flexibility, however, Applicant submits that the invention of Darling puts a lower limit on permissible wall thickness which would be readily understood by one of ordinary skill in the art. Darling discusses in Col. 1, lines 52-53 the elongation of the conduit upon ejection of personnel from aircraft, and as a general object notes severe conditions of stress, strain, and external force. Darling teaches “flexibility” in a very

different context to that of the present invention as claimed. The Examiner suggests that Applicant has failed to provide proof of any lower limit.

Applicant submits that common sense would prevent one of ordinary skill in the art from reducing the wall thickness of Darling to less than 50 microns. Applicant has previously sent the Examiner samples of very thin walled conduits which were made in accordance with the present invention. Inspection of these conduits illustrates just how fragile they become when the walls are very thin (i.e., less than 50 microns).

Applicant submits that it is difficult to understand how it can set about “proving” something that seems self-evident. The amended claims now recite that the membrane is so thin it is insufficiently sturdy to be self supporting. Applicant submits that the conduit as claimed would be instantly recognizable as manifestly unsuitable for the application taught in Darling. While Applicant admits that Darling does not specifically note a lower limit for wall thickness, Applicant submits that common sense applied to the context of Darling teaches a minimum wall thickness of not less than 50 microns.

The Examiner has not provided any reasonable explanation as to why a person of ordinary skill in the art would modify the teaching of Darling according to Gray, and arrive at a very thin walled conduit as claimed. The resulting conduit would not be capable of fulfilling the object of Darling which is to provide an impervious tube which is flexible, non-kinking, and non-collapsible under the extreme conditions of stress, strain, and external force, contemplated during ejection from an aircraft. As a result, it is not obvious to reduce the wall thickness of Darling to less than 50 microns. Applicant submits that this would be self-evident to one of ordinary skill in the art.

Therefore, Applicant submits that the combination of Darling and Gray does not render obvious amended claim 1. Reconsideration and withdrawal of the rejection is requested. Allowance is requested.

Claims 2, 5-8 and 14-18 are dependent upon amended claim 1 which Applicant submits is allowable. Therefore, Applicant submits that claims 2, 5-8 and 14-18 are allowable. Reconsideration and allowance is requested. Claim 20 is dependent upon amended claim 19 which Applicant submits is allowable. Therefore, Applicant submits that claim 20 is allowable. Reconsideration and allowance is requested.

Claims 1, 3, 4, and 9-13 were rejected under 35 U.S.C. §102 as allegedly being unpatentable over United States Patent No. 4,838,258 to Dryden in view of United States Patent No. 4,517,404 to Hughes and United States Patent No. 5,526,849 to Gray. Reconsideration and withdrawal of these rejections is requested.

Similar to that of Darling, Applicant submits that it would not be obvious to reduce the wall thickness of the conduit formed by combining Dryden and Hughes, as allegedly shown by Gray, to less than 50 microns because the conduit would no longer function as intended. Such thin conduits might be suitable for air conditioning applications (i.e. Gray) where no person is directly attached to the end of the conduit and substantial internal volume pressures are not acceptable. However, the complete lack of breathing conduits having a thickness of less than 50 microns in the prior art is evidence that for applications where a patient/person has a mask directly attached to the conduit, these fluctuations are not acceptable. This is discussed in the background of the present application.

Therefore, Applicant submits that the combination of Dryden, Hughes and Gray does not render obvious amended claim 1. Reconsideration and withdrawal of the rejection is requested. Allowance is requested.

Claims 3, 4, and 9-13 are dependent upon amended claim 1 which Applicant submits is allowable. Therefore, Applicant submits that claims 3, 4, and 9-13 are allowable. Reconsideration and allowance is requested.

With further regard to claim 3, none of the Dryden, Hughes and/or Gray discloses a hollow reinforcing member which passes through the two connectors in a blind manner. None of Dryden, Hughes or Gray discloses blind termination. Gray does not disclose an elongate reinforcing member at all. Dryden and Hughes disclose members within the conduit for conveying liquid or gas, and therefore, cannot be blind terminated. Applicant requests reconsideration and withdrawal of the rejection of claim 3. Allowance is requested.

A Request for Continued Examination and a Petition for a One-Month extension of time to extend the date for response up to and including July 18, 2008 is enclosed.

In view of the above Remarks, Applicant respectfully submits that the claims of the application are allowable over the rejections of the Examiner. Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

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